



March 27, 2001

Ms. Stephanie H. Harris
Assistant City Attorney
City of Paris
P.O. Box 9037
Paris, Texas 75461-9037

OR2001-1212

Dear Ms. Harris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145299.

The City of Paris Police Department (the "department") received a request for video tapes and transcripts of police radio traffic related to two patrol units and events which occurred between 11 p.m., Thursday, December 28 and 2 a.m., Friday, December 29, 2000. You state that the video tapes of events made during this time have been transferred to the Texas Rangers. We assume from your letter to us that the videotapes turned over to the Texas Rangers cover all events taking place between the time of 11 p.m., Thursday, December 28 and 2 a.m., Friday, December 29, 2000. You also state that no transcripts of police radio traffic between these time periods have been made. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Regarding the transferred videotapes, section 552.002(a) of the Government Code defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). You state that you do not possess the videotapes at this time. Ordinarily, a governmental body is not required to obtain information not in its possession. *See Open Records Decision No. 518 (1990)*. However,

information in the possession of another entity may nevertheless be subject to the Public Information Act (the "Act") if the entity holds the information for the governmental body or if the governmental body owns the information or has a right of access to the information. *See* Gov't Code § 552.002(a). The department Police Chief states that agencies, such as the Texas Rangers in this case, normally conduct investigations regarding police officer shootings in due regard for objectivity and impartiality. You state that "the Paris Police Department has not and could not retain copies of them." Therefore, the Texas Rangers are not holding the videotapes for the department and the department does not have a right of access to them. Consequently, the Act does not require the department to produce the tapes to the requestor.

You state that no transcripts of police radio traffic exist for the specified time periods. The Act does not require a governmental body to create or prepare new information in responding to a request for information. *See* Attorney General Opinion JM-672; *see also* Open Records Decision Nos. 452 (1986), 467 (1987). However, a governmental body must make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990); *see also* Open Records Decision No. 87 (1975). You submitted to us a copy of an audiotape of police radio traffic made during the specified time periods, which we believe is information the department holds that relates to the requested transcript.

You raise section 552.108 of the Government Code, which excepts from disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

Gov't Code § 552.108(a)(1). You state that the investigation into this matter is ongoing. Therefore, you may withhold the audiotape information from disclosure pursuant to section 552.108(a)(1) of the Government Code. In light of our conclusion under section 552.108, we need not address your section 552.103 claim.

In summary, the department is not required to produce the videotapes to the requestor, since the Texas Rangers are not holding the videotapes for the department and the department does not have a right of access to them. The Act does not require the department to create a transcript in response to the request. However, the department must relate the request to information that it holds and provide the requestor with the audiotape, unless it is subject to an exception to disclosure. Since you state that the investigation into this matter is ongoing, the audiotape information is excepted from disclosure under section 552.108 of the Government Code and may be withheld from the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Kay Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KH/RJB/seg

Ref: ID# 145299

Encl. Submitted documents

cc: Ms. Laura Jett Krantz
News Editor
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(w/o enclosures)